IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Ramesh Chand Vs. State of Raj.
(D.B. Criminal Jail Appeal No.160/2002)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 10-12-2001 in Sessions Case No.155/2001 passed by Shri Shiv Singh Chauhan, RHJS, Additional Sessions Judge (Fast Track) No.2, Jhalawar.

Date of Judgment: April 03, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Tarun Jain, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Ramesh Chand, the appellant herein, was put to trial before the learned Additional Sessions Judge (Fast Track) No.2, Jhalawar, on the allegation of murder of his mother Naurangi Bai. Learned Judge vide judgment dated December 10, 2001 convicted and sentenced the appellant under section 302 IPC to suffer imprisonment for life and fine of Rs.200, in default to further suffer one month simple imprisonment.

2. It is the prosecution case that on the basis of written report (Ex.P-1) submitted by Ram Chandra (Pw.1) at Police Station Sarola Kala on August 29, 2000 a case under section 302 IPC was registered and investigation commenced. It was interalia stated in the report that the

appellant around 7.00 AM on the said day demanded explanation from his mother as to why she eloped with Chhotia and inflicted knife blows on her person. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Jhalawar. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 11 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. On hearing final submissions learned trial Judge convicted and sentenced the appellant as indicated herein above.

3. We have heard the rival submissions and scanned the material on record.

4. Death of Norangi bai was homicidal in nature. Vide Post Mortem Report (Ex.P-8) following antemortem injuries were found on the dead body:-

> 1. Stab wound 1½" x ¾" x 2" on both 4th & 5th intercostal space into heart deep left verticle transverse.
> 2. Stab wound 1" x ¼" x muscle deep on below left scapula transversely
> 3. Stab wound 1" x ¼" x muscle deep left Hypochondrium region of abdominal

Dr. Nemi Chand Verma (Pw.7), who conducted autopsy on the dead body, deposed that the cause of death was hemorrhagic shock due to stab injury on heart.

5. It is the primary principle of criminal law that the onus of proving the charge against the accused rests upon the prosecution and never

shifts, and it lies upon the prosecution to establish, beyond reasonable doubt the guilt of the accused. Before the accused can be convicted under section 302 IPC, it is the duty of the prosecution to prove such intention or knowledge as is mentioned in Section 300 IPC. Under Exception I to Section 300 IPC, culpable homicide is not murder if the offender cause death of the person who gave the provocation or that of any other person by mistake or accident provided the provocation was grave and sudden and by reason of the said provocation the offender was deprived of his power of self-control and the offence was committed during the continuance of deprivation of the power of self-control. The applicability of the doctrine of provocation rests on the fact that it brings about a sudden and temporary loss of self-control. The test applied is the conduct of a reasonable person in circumstances which give rise to grave and sudden provocation. Before an accused can draw any benefit from Exception I to Section 300 IPC, there should be some circumstance to indicate that the act of the accused was done in the same transaction in which he received the grave and sudden provocation.

6. Evidently the fact of provocation find place in the FIR that reads as under:-

> "आज दिनांक 29/8/2000 को सुबह करीब 6½- 7 बजे करीब नौरंगी बाई का बडा लडका रमेश पिता कन्हा माली मोई कला से हमारे घर आया व मेरी मौसी नोवरंगी बाई चबूतरे पर बैठी हुए मंजन कर रही थी, से लडने लगा व कहा कि तू छोटीया माली के साथ भाग कर क्यो आई इससे हमारी बदनामी हुई है यह कहते हुए रमेश ने चाकू की मौसी नोवरंगी बाई बैठी हुई के बाई तरफ आंचल पर मारी व एक चोट आंचल के नीचे व एक पीठ पर मारी।"

7. Since on account of grave and sudden provocation the appellant lost his self control and inflicted knife blows on the person of his mother, in our opinion Exception I to Section 300 IPC is attracted and the appellant is guilty of having committed the offence under section 304 Part II

IPC.

8. For these reasons, we partly allow the appeal and instead of section 302 we convict the appellant under section 304 part II IPC. Looking to the fact that the appellant has already undergone confinement for a period more than 6 years the ends of justice would be met in sentencing him to the period already undergone by him in confinement. The appellant Ramesh Chand, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case.

The impugned judgment stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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